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July 19, 2002

**VIA Facsimile**

Chief of Records  
Office of Foreign Assets Control  
Department of Treasury  
1500 Pennsylvania Avenue, NW.  
Washington, DC 20220

Attention: Request ~~for~~ Comments

Re: Proposed Rule Governing ~~Availability~~ of Information

Dear Sir or Madam:

Bank One Corporation ("Bank One") appreciates the opportunity to comment on the Office of Foreign Asset Control's ("OFAC") proposed rule issued under 31 CFR Chapter V, concerning the disclosure of certain civil penalties imposed by OFAC and informal settlements made by OFAC with Institutions subject to its regulations ("Proposal"). Bank One's lead bank, Bank One, N.A. (Chicago) is a member of The New York Clearing House Association, L.L.C. (the "NYCH"), which will be submitting a letter offering comprehensive comments on the Proposal. Bank One concurs with the NYCH's comments on the Proposal. However, Bank One **offers the following additional comments to the Proposal on the need:** (i) to shield the identity of entities as well as individuals, (ii) to exempt entities which self-disclose possible OFAC **sanction violations** from the public notice process, and (iii) to clarify that only penalties levied from the time of enactment of the regulation will be disclosed through the public notice process.

1. **The Name of the Entity Who Has Unintentionally Violated OFAC Sanctions Should Not Be Disclosed.**

Bank One strongly believes that the **name** of the entity should not be **disclosed** in the public notice process **unless** the entity has willfully or intentionally violated OFAC laws, Bank One understands that OFAC needs to make public certain information pertaining to the settlement of civil penalties under the Freedom of Information Act. However, we believe that the release of names of individuals or entities does not serve any compelling public interest purpose except when there is a willful violation. In our experience, **most** OFAC violations by entities occur from unintentional error as opposed to a "willful" intent to violate the law. The naming of entities in a public notice subjects entities, which are constantly improving compliance programs to limit error, to adverse publicity. This type of disclosure will redirect emphasis away from improving OFAC compliance programs to capturing positive public opinion. Thus far, institutions have generally self-disclosed

potential violations uncovered internally in efforts to cooperate with OFAC. This practice has resulted in informal settlements of possible OFAC violations. The disclosure of the names of entities, which have been penalized under OFAC sanctions, will discourage rapid settlement of these infractions and therefore, does not serve public interest. As there is an interest in protecting individuals' identities, OFAC should apply *the* same rationale to entities that have worked and cooperated with OFAC by instituting and strengthening compliance programs. However, Bank One recognizes that OFAC should have broad discretion in releasing information about entities that intentionally violate OFAC sanctions. As a result of these factors, Bank One urges OFAC to reconsider the release of names of entities except for those entities that have willfully violated OFAC sanctions.

2. Entities Which Self-Disclose Possible OFAC Violations Should Be Exempted From the Public Notice Process.

In the event that OFAC does not accept our recommendation in Section 1, Bank one believes that OFAC should not publicly disclose the names of any entity that has reported its own potential violation to OFAC or that has informally settled a case of an alleged violation with OFAC without any finding that the entity violated the law. Because there is no legal requirement for banks to self-disclose violations to OFAC, these types of disclosures are done to be good corporate citizens and to establish a record of cooperation with OFAC. In addition, there has been little or no adverse publicity resulting from self-disclosure or informal settlements. However, the release of information changes this process by subjecting banks to the potential of unnecessary adverse publicity that is likely to be ill-informed and have virtually no discussion of the unintentional nature of the alleged violation, whether the bank reported the transaction on its own, or whether the bank settled without any admission of guilt.

Bank One believes that adverse publicity will discourage institutions from voluntarily reporting possible violations, and when potential violations come to OFAC's attention, to take advantages of all rights in the way of hearings, litigation, and appeals that may be available to them. For these reasons, Bank One strongly urges OFAC not to disclose the names of an entity that has voluntarily reported a possible violation or informally settled without admitting a violation.

3. Only Penalties Levied After the Enactment of the Regulation Should Be Disclosed Through the Public Notice Process.

Bank One suggests that only penalties levied after the enactment of the final OFAC regulation should be disclosed through the public notice process. Bank One believes that clarification is needed on when and what penalties OFAC will publish prospectively. We recommend that OFAC clarify the Proposal and state that its intent is to publish details of penalties which arise only after the publication of the final rule. Institutions have settled cases and self-disclosed potential violations under the understanding that details of the case would not be publicly available. The release of information as contemplated by the Proposal will change the incentives with respect to self-disclosure and settlement and would be unfairly applied retroactively. Therefore, Bank one strongly urges OFAC to only release information about penalties levied after the enactment of the final rule.

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Thank you in advance for your consideration. If you have any questions about the foregoing comments, please contact the undersigned (312-732-4291) or James Roselle (312-732-5298).

Very truly yours,

A handwritten signature in dark ink, appearing to read "Gelene M. Stanton", followed by a horizontal line.

**Gelene M. Stanton**  
**Assistant Vice President and Counsel**

**Enclosure**

Jul 19 2002 15:20 P.04

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